IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Crl.MC.No. 3546 of 2003

CC.132/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, MANANTHAVADY

.....

PETITIONER/ACCUSED NO.1:

BR.SUPERIOR JOSEPH MATHEW, MANAGER,
NIRMALAGIRI ESTATE, MATTILAYAM P.O.,
THONDERNADU, NORTH WAYANAD.

BY ADV. SRI.M.C.JOHN

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 3546 of 2003

ORDER

The petitioner Br.Superior Joseph Mathew, Manager, Nirmalagiri Estate, Thondernadu, North Waanad is the accused in C.C.No.132/01 on the file of the Judicial First Class Magistrate's Court-I, Mananthavady. He has been charge sheeted by the Forest Range Officer, Mananthavady for offence under Section 5 of the Kerala Preservation of Trees Act, 1986 read with Section 9A thereof, inter alia, on the allegation that he has caused to cut and remove 171 trees from an extent of 6.072 hectares of land of Nirmalagiri Estate in the ownership of Aranyasramam in Thondernadu Village of Mananthavady Taluk without prior permission from the competent officer. The petitioner is arrayed as Accused No.1, he being the Manager of Nirmalagiri Estate.

2. The prayer in this Crl.M.C. is to quash all further proceedings against the petitioner in Annexure I final report registered as C.C.No.132/01

on the file of the Judicial First Class Magistrate's Court-I, Mananthavady.

3. It is contended before me by the learned counsel for the petitioner that under Section 5 of the Act, the Government is competent to prohibit, with a view to preserve the tree growth in private forests or in cardamom hill reserve or in any other area cultivated with cardamom, by notification in the Gazette, that no trees standing in such areas specified in the notification, shall be cut, uprooted, burnt or otherwise destroyed, except on the grounds mentioned in Clauses (a) and (b) of that Section. But, the land in possession of Aranyasramam, of which, the petitioner is the Manager, is land planted with coffee and that the Government has no authority to notify such land under Section 5 of the Act and therefore, no offence under Section 5 of the Act read with Section 9A thereof can stand as against the petitioner, even accepting the entire case of the

prosecution as such.

4. The learned Public Prosecutor has brought to my notice S.R.O.No.4/86 dated 30.12.1985, notifying under Section 5(1) of the Ordinance, as it stood then, that no trees standing in the area specified in the schedule to the notification shall be cut, uprooted or burnt, except under grounds mentioned therein, of which, we are not presently concerned as far as this case is concerned. According to the Prosecutor, Item No.1 in Item 48 in the said notification, which consists of 6.072 hectares of coffee plantation in Nirmalagiri Estate, comprised in Sy.No.1106, is the land so notified under Section 5(1) of the Ordinance and therefore, no tree from there could have been cut and removed and that constitutes an offence punishable under Section 9A of the Act. To the contention advanced by the counsel for the petitioner that the area is planted with coffee and not cardamom and therefore, Section 5 of the Act does not apply to the property

in Sy.No.1106 of Thondernadu Village in Mananthavady Taluk, Prosecutor submits that this Court has, in **Rajasekharan Nair v. Asst. Settlement Officer** (1998 (2) KLT 721), held that the question is not as to whether cardamom is actually planted in the area, but as to whether that falls within the area cultivated with cardamom, though, in the specific plot covered in the notification, there is no cardamom cultivation. It was also held in the said decision that the prohibition contained under Section 5 of the Act applies even if the property in question is not presently cultivated with cardamom, so long as that property is within the area where cardamom is cultivated. It was further observed in the said decision that the land involved in the said case was the land assigned in terms of Cardamom Registry Rules and it was pointed out by the learned Public Prosecutor in that case that the cardamom Registry Rules are applicable to such lands and no one can cultivate the land with

any other crop and if so cultivated, the conditions of assignment will stand violated and shall result in resumption of the land.

5. According to the counsel for the petitioner, there is no cardamom cultivation anywhere in and around Nirmalagiri Estate or in Thondernadu Village of Mananthavady Taluk and further, the land is not one assigned under the Cardamom Registry Rules and hence, by no stretch of imagination can the area be considered as a land to which Section 5 of the Act can be applied and that the decision aforesaid has no application to the instant case. The notification shows that in no land so notified is cardamom cultivation. It is also brought to my notice that this Court in Crl.M.C.No.3549/03 has quashed the criminal proceedings against the petitioner in relation to cutting of two trees from the same area on an earlier occasion. In view of what has been discussed above, I am of the view that no prosecution can lie against the petitioner

for offence under Section 5 of the Act read with Section 9A thereof, even accepting the prosecution case as such, for the reasons aforementioned.

In the result, allowing this Crl.M.C. I quash the proceedings against the petitioner in C.C.No. 132/01 on the file of the Judicial First Class Magistrate's Court, Mananthavady.

12th July, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.M.C..No.3546 of 2003

ORDER

12th July, 2007